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AMENDED IN SENATE AUGUST 28, 2006
AMENDED IN SENATE AUGUST 7, 2006
AMENDED IN SENATE JUNE 28, 2006
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AMENDED IN ASSEMBLY APRIL 25, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1665

Introduced by Assembly Member Laird

(Coauthor: Assembly Member Jones)

(Coauthors: Senators Florez, Kuehl, Machado, and Torlakson)

February 22, 2005

~~An act to amend Sections 12878.1, 12878.21, and 12878.23 of, to add Sections 8306, 8612, 8613, 12585.11, and 12585.12 to, and to add Chapter 9 (commencing with Section 9110) to Part 4 of Division 5 of, the Water Code, relating to water. An act to amend Sections 65302, 65303.4, and 65352 of, and to add Sections 65302.7, 65584.08, and 66474.11 to, the Government Code, and to amend Sections 12878.1, 12878.21, and 12878.23 of, to add Sections 8306, 8612, 8613,~~

12585.11, and 12585.12 to, and to add Chapter 6 (commencing with Section 8460) to Part 2 of, to add Chapter 9 (commencing with Section 9110) to Part 4 of, and to add Part 8 (commencing with Section 9650) to, Division 5 of, the Water Code, relating to water resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 1665, as amended, Laird. Water resources.

(1) *The Planning and Zoning Law requires a city or county general plan to include specified mandatory elements, including a land use element that designates the proposed general distribution and general location and extent of the uses of the land for various purposes and a conservation element that considers, among other things, the effect of development within the jurisdiction, as described in the land use element, on natural resources located on public lands. The land use element is required to identify areas that are subject to flooding, and the conservation element may also cover, among other things, flood control.*

This bill would require the land use element to identify and annually review those areas covered by the general plan that are subject to flooding as identified by floodplain mapping prepared by the Federal Emergency Management Agency or the Department of Water Resources (department) and would require, upon the next revision of the housing element on or after January 1, 2008, the conservation element of the general plan to identify rivers, creeks, and streams, flood corridors, riparian habitat, and land that may accommodate floodwater for purposes of groundwater recharge and stormwater management. By imposing new duties on local public officials, the bill would create a state-mandated local program.

(2) *The Planning and Zoning Law also requires that a city or county general plan contain a safety element for the protection of the community from any unreasonable risks associated with the effects of seismically induced surface rupture, ground shaking, ground failure, tsunami, seiche, and dam failure; slope instability leading to mudslides and landslides; subsidence; liquefaction; other seismic and geologic hazards; flooding; and fire hazards.*

The Planning and Zoning Law also requires, prior to the periodic review of its general plan and prior to preparing or revising its safety element, each city and county to consult with the Division of Mines

and Geology of the Department of Conservation and the Office of Emergency Services, as specified, and requires that at specified times prior to adoption or amendment of the safety element each city and county submit one copy of a draft or amendment of the safety element to specified state agencies and local governments for review pursuant to specified procedures.

This bill would also require, upon the next revision of the housing element, on or after January 1, 2008, the safety element to identify, among other things, information regarding flood hazards, establish a set of comprehensive goals, policies, and objectives, based on specified information, for the protection of the community from unreasonable risks of flooding, and establishes feasible implementation measures.

This bill would also require each city and county located within the boundaries of the Sacramento and San Joaquin Drainage District to submit the draft element of, or draft amendment to, the safety element to the Reclamation Board (board) and every local agency that provides flood protection to territory in the city or county at least 90 days prior to the adoption of, or amendment to, the safety element, of its general plan. The bill would also require the board and each local agency to review the draft or an existing safety element and report their respective written recommendations to the planning agency within 60 days of the receipt of the draft or existing safety element, as specified. By establishing these requirements on local agencies, this bill would impose a state-mandated local program.

(3) The Planning and Zoning Law requires, prior to action by a legislative body to adopt or substantially amend a general plan, that the planning agency refer the proposed action to specified state, local, and federal agencies.

This bill would also require that the proposed action be referred to the board if the proposed action is within the boundaries of the Sacramento and San Joaquin Drainage District.

(4) The Planning and Zoning Law requires at least 2 years prior to a scheduled revision of a local government's housing element that each council of governments, or delegate subregion, as applicable, develop a proposed methodology for distributing the existing and projected regional housing need to cities, counties, and cities and counties within the region or within the subregion, where applicable pursuant to specified provisions. That law requires that the methodology be consistent with specified objectives that include,

among other things, a determination of the availability of land suitable for urban development or for conversion to residential use, the availability of underutilized land, and opportunities for infill development and increased residential densities.

This bill would provide that the determination of available land suitable for urban development may exclude lands where the flood management infrastructure designed to protect the jurisdiction is not adequate to avoid the risk of flooding such that the development of housing would be infeasible due to cost or other considerations.

(5) Existing law, the Subdivision Map Act, requires a local agency to include a specified condition in a tentative map that it is authorized to approve, relative to the availability of a sufficient water supply prior to completing a subdivision, authorizes a local agency to condition map approval on the making of public improvements, and authorizes a city or county to require an informational map or survey to be filed or recorded with a final or parcel map relating to flood hazard zones.

This bill would require a local agency, if a local agency requires the subdivider to construct or improve flood protection facilities as a condition of a tentative map, parcel map, or final map application or approval, to determine whether the construction or improvement of those facilities would result in increasing the risk of flooding or damages to other real property in the same watershed.

(6) Existing law, under various circumstances, subjects a public entity or an employee of a public entity to liability for property damage or personal injury caused by or from floods or floodwaters.

This bill, in addition to any other legal responsibility provided by law, would subject a city or county to liability, whether or not the city or county directly participates in the operation or maintenance of a flood control project, to the extent that the city or county increases the amount of property damage sustained in a flood by approving new development in a levee flood protection zone, as defined. The bill would provide that nothing in this provision shall be construed to limit a court from finding a city or county liable for damages sustained in a flood caused by its act or acts, including approval of a development and public improvements in an area protected by a levee that constitutes a contributing cause of the damages.

(7) The department performs various flood control activities throughout the state. Existing law also authorizes the board to engage in various flood control activities along the Sacramento River and San

Joaquin River, their tributaries, and related areas. Existing law requires the board to establish and enforce standards for the maintenance and operation of, and to undertake other responsibilities with regard to, flood control works under its jurisdiction.

This bill would authorize the department to provide meals and other necessary support to any person engaged in emergency flood fight activities, as defined, on behalf of, or in cooperation with, the department. The bill would require the department, on or before December 31, 2007, to prepare, and the board to adopt, a schedule for mapping areas at risk of flooding in the Sacramento River and San Joaquin River drainage. The bill would authorize the board or the department to establish a program of mitigation banking for the activities of the board or the department and for the benefit of local districts in the discharge of specified flood control responsibilities.

The would require the department to prepare, and the board to adopt, a flood control system status report, to be updated periodically, for the State Plan of Flood Control, as defined, and to undertake a related inspection of project levees, as defined. The bill would require the department, on or before September 1, 2009, and on or before September 1 of each year thereafter, to provide written notice to each landowner whose property is determined to be within a levee flood protection zone. The bill would require the department to prepare, update, and maintain maps for levee flood protection zones.

The bill would require, on or before September 30 of each year, a local agency responsible for the operation and maintenance of a project levee to prepare and submit to the department a specified report of information for inclusion in periodic flood management reports prepared by the department. By establishing these requirements on a local agency, the bill would impose a state-mandated local program. The bill would require the department, on or before December 31, 2007, to prepare and transmit to the board a report on project levees that are operated and maintained by each local agency using certain information. The bill would specify that a local agency responsible for the operation and maintenance of a project levee may propose to the board an upgrade of the project levee.

(8) Existing law authorizes, on a project-by-project basis, and in accordance with designated plans, state participation in federal flood control projects and specifies the degree of cooperation to be assumed by the state and local agencies in connection with those projects.

Existing law, except as otherwise provided, requires the board to give assurances satisfactory to the Secretary of the Army that local cooperation as required by federal law will be furnished by the state in connection with described flood control projects.

This bill would authorize the department or the board, upon appropriation for certain projects, to advance funds to the federal government or perform flood control and environmental restoration project planning, design, and construction in advance of the federal government and seek reimbursement or credit from the federal government for the cost of that work determined by the federal government to be eligible for reimbursement or credit. The bill would authorize the department or the board to participate with the federal government or local agencies in the design of environmental enhancements associated with a federal flood control project and participate in the construction of environmental enhancements associated with a federal flood control project for which the state has authorized state participation.

(9) Existing law establishes procedures for the assumption of flood control maintenance and operation duties by the department in connection with the formation of a maintenance area on behalf of a federal flood control project unit. Under existing law, the department and the board are not required to form a maintenance area if neither agency has given the nonfederal assurances to the United States required for the project, except as otherwise provided for a project for which an application for the formation of the maintenance area has been submitted on or before July 1, 2003. Existing law prescribes requirements relating to the imposition of assessments on behalf of a maintenance area. Existing law requires the funds generated by the imposition of the assessments to be deposited in the Water Resources Revolving Fund and continuously appropriates those funds to pay the operation and maintenance costs of maintenance areas. Existing law provides for the dissolution of a maintenance area.

This bill would delete the provisions relating to the formation of a maintenance area for a project for which an application for the formation of a maintenance area has been submitted on or before July 1, 2003. The bill would provide that the department is not required to perform certain work in connection with the formation of a maintenance area requested by a local agency until the local agency requesting the formation of the maintenance area pays to the

department an amount of money that reflects certain costs incurred by the department.

The bill would authorize the board or the department to form a maintenance area for a project unit, or any portion of a project unit. The bill would provide that, if a maintenance area is formed for a portion of a project unit, any remaining portion of the project unit not included in the maintenance area shall remain the responsibility of the local agency obligated to operate and maintain that unit. The bill would authorize the board and the department to consolidate maintenance areas that share a common boundary.

(10) Under existing law, the department expends or allocates funds on behalf of various flood control projects within the Sacramento-San Joaquin Delta and related areas.

This bill, commencing July 1, 2007, would subject the allocation or expenditure of funds by the state for the upgrade of a project levee, if that upgrade is authorized by a statute that becomes operative on or after July 1, 2007, that protects an urban area in which more than 1,000 people reside to a requirement that the local agency responsible for the operation and maintenance of the project levee and any city or county protected by the project levee enter into an agreement to adopt a safety plan that includes specified components, within 2 years. If a city or county is responsible for the operation or maintenance of the project levee, the bill would require the governing body to approve a resolution committing to the preparation of a safety plan within 2 years. The bill would define the “upgrade of a project levee” to mean specified improvements, excluding any action undertaken on an emergency basis.

(11) This bill would require the department, in consultation with the board and other appropriate agencies, to conduct a study to identify the persons or entities that benefit from the delta levees, project levees, and levee conveyance system, as those terms are defined. The bill would require the department to submit a report to the Legislature by January 1, 2008, that reflects the conclusions of the study. The bill would require the department to include in the report recommendations as to those persons and entities on which a fee should be imposed to create a dedicated revenue stream to pay for the maintenance of, and improvements to, the delta levees, project levees, and levee conveyance system.

(12) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the

state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(13) The bill would become operative only if SB 1796 is enacted and becomes operative.

~~(1) The Department of Water Resources (department) performs various flood control activities throughout the state. Existing law authorizes the Reclamation Board (board), an agency established within the department, to engage in various flood control activities along the Sacramento River and San Joaquin River, their tributaries, and related areas. Existing law requires the board to establish and enforce standards for the maintenance and operation of, and to undertake other responsibilities with regard to, flood control works under its jurisdiction.~~

~~This bill would authorize the department to provide meals and other necessary support to any person engaged in emergency flood fight activities, as defined, on behalf of, or in cooperation with, the department. The bill would require the department, on or before December 31, 2007, to prepare, and the board to adopt, a schedule for mapping areas at risk of flooding in the Sacramento River and San Joaquin River drainage. The bill would authorize the board or the department to establish a program of mitigation banking for the activities of the board or the department and for the benefit of local districts in the discharge of specified flood control responsibilities. The bill would require the department to prepare, and the board to adopt, a flood control system status report, to be updated periodically, for the State Plan of Flood Control and to undertake a related inspection of specified levees.~~

~~The bill would require the department, on or before September 1, 2009, and on or before September 1 of each year thereafter, to provide written notice to each landowner whose property is determined to be within a levee flood protection zone, as defined. The bill would require the department to prepare, update, and maintain maps for levee flood protection zones.~~

~~The bill would require, on or before September 30 of each year, a local agency responsible for the operation and maintenance of a project levee, as defined, to prepare and submit to the department a specified report of information for inclusion in periodic flood management reports prepared by the department. By establishing these requirements on a local agency, the bill would impose a state-mandated local program. The bill would require the department, on or before December 31, 2007, to prepare and transmit to the board a report on project levees that are operated and maintained by each local agency using certain information. The bill would specify that a local agency responsible for the operation and maintenance of a project levee may propose to the board an upgrade of the project levee.~~

~~(2) Existing law authorizes, on a project-by-project basis, and in accordance with designated plans, state participation in federal flood control projects and specifies the degree of cooperation to be assumed by the state and local agencies in connection with those projects. Existing law, except as otherwise provided, requires the Reclamation Board to give assurances satisfactory to the Secretary of the Army that local cooperation as required by federal law will be furnished by the state in connection with described flood control projects.~~

~~This bill would authorize the department or the board, upon appropriation for certain projects, to advance funds to the federal government or perform flood control and environmental restoration project planning, design, and construction in advance of the federal government and seek reimbursement or credit from the federal government for the cost of that work determined by the federal government to be eligible for reimbursement or credit. The bill would authorize the department or the board to participate with the federal government or local agencies in the design of environmental enhancements associated with a federal flood control project and participate in the construction of environmental enhancements associated with a federal flood control project for which the state has authorized state participation.~~

~~(3) Existing law establishes procedures for the assumption of flood control maintenance and operation duties by the department in connection with the formation of a maintenance area on behalf of a federal flood control project unit. Under existing law, the department and the board are not required to form a maintenance area if neither agency has given the nonfederal assurances to the United States~~

~~required for the project, except as otherwise provided for a project for which an application for the formation of the maintenance area has been submitted on or before July 1, 2003. Existing law prescribes requirements relating to the imposition of assessments on behalf of a maintenance area. Existing law requires the funds generated by the imposition of the assessments to be deposited in the Water Resources Revolving Fund and continuously appropriates those funds to pay the operation and maintenance costs of maintenance areas. Existing law provides for the dissolution of a maintenance area.~~

~~This bill would delete the provisions relating to the formation of a maintenance area for a project for which an application for the formation of a maintenance area has been submitted on or before July 1, 2003. The bill would provide that the department is not required to perform certain work in connection with the formation of a maintenance area requested by a local agency until the local agency requesting the formation of the maintenance area pays to the department an amount of money that reflects certain costs incurred by the department.~~

~~The bill would authorize the board or the department to form a maintenance area for a project unit, or any portion of a project unit. The bill would provide that, if a maintenance area is formed for a portion of a project unit, any remaining portion of the project unit not included in the maintenance area shall remain the responsibility of the local agency obligated to operate and maintain that unit. The bill would authorize the board and the department to consolidate maintenance areas that share a common boundary.~~

~~(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.~~

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature hereby finds and declares all of
2 the following:

3 (a) The central valley of this state is experiencing
4 unprecedented development, resulting in the conversion of
5 historically agricultural lands and communities to densely
6 populated residential and urban centers.

7 (b) The Legislature recognizes that by their nature, levees,
8 which are earthen embankments typically founded on fluvial
9 deposits, cannot offer complete protection from flooding, but can
10 decrease its frequency.

11 (c) The Legislature recognizes that the level of flood
12 protection afforded rural and agricultural lands by the original
13 flood control system is not considered adequate to protect those
14 lands when developed for urban uses, and that a dichotomous
15 system of flood protection for urban and rural lands has
16 developed through many years of practice.

17 (d) The Legislature further recognizes that levees built to
18 reclaim and protect agricultural land may be inadequate to
19 protect urban development unless those levees are significantly
20 improved.

21 (e) Local agencies are primarily responsible for making land
22 use decisions in the state, and the Legislature intends that they
23 retain that lead role.

24 (f) Local agencies rely upon federal flood plain information
25 when approving developments, but the information available is
26 often out-of-date and the flood risk may be greater than that
27 indicated using available federal information.

28 (g) Flood plain management tools such as flood plain
29 mapping, the National Flood Insurance Program, and the
30 designated floodway program, represent important supplemental
31 activities to educate the public about, and protect the public from,
32 flood hazards.

33 (h) It is necessary for the state to immediately undertake the
34 task of mapping flood plains and submitting up-to-date
35 information to the federal government so that the federal
36 National Flood Insurance Program maps reflect current and
37 accurate conditions. In this way, the public can be provided with
38 reliable information regarding flooding potential, and local

1 agencies can make informed land use and flood management
2 decisions so that the risk to life and property can be effectively
3 reduced.

4 *SEC. 2. Section 65302 of the Government Code is amended to*
5 *read:*

6 65302. The general plan shall consist of a statement of
7 development policies and shall include a diagram or diagrams
8 and text setting forth objectives, principles, standards, and plan
9 proposals. The plan shall include the following elements:

10 (a) A land use element that designates the proposed general
11 distribution and general location and extent of the uses of the
12 land for housing, business, industry, open space, including
13 agriculture, natural resources, recreation, and enjoyment of
14 scenic beauty, education, public buildings and grounds, solid and
15 liquid waste disposal facilities, and other categories of public and
16 private uses of land. *The location and designation of the extent of*
17 *the uses of the land for public and private uses shall consider the*
18 *identification of land and natural resources pursuant to*
19 *paragraph (3) of subdivision (d).* The land use element shall
20 include a statement of the standards of population density and
21 building intensity recommended for the various districts and
22 other territory covered by the plan. The land use element shall
23 identify *and annually review those* areas covered by the plan
24 ~~which that are subject to flooding and shall be reviewed annually~~
25 ~~with respect to those areas as identified by floodplain mapping~~
26 *prepared by the Federal Emergency Management Agency or the*
27 *Department of Water Resources.* The land use element shall also
28 do both of the following:

29 (1) Designate in a land use category that provides for timber
30 production those parcels of real property zoned for timberland
31 production pursuant to the California Timberland Productivity
32 Act of 1982, Chapter 6.7 (commencing with Section 51100) of
33 Part 1 of Division 1 of Title 5.

34 (2) Consider the impact of new growth on military readiness
35 activities carried out on military bases, installations, and
36 operating and training areas, when proposing zoning ordinances
37 or designating land uses covered by the general plan for land, or
38 other territory adjacent to military facilities, or underlying
39 designated military aviation routes and airspace.

1 (A) In determining the impact of new growth on military
2 readiness activities, information provided by military facilities
3 shall be considered. Cities and counties shall address military
4 impacts based on information from the military and other
5 sources.

6 (B) The following definitions govern this paragraph:

7 (i) “Military readiness activities” mean all of the following:

8 (I) Training, support, and operations that prepare the men and
9 women of the military for combat.

10 (II) Operation, maintenance, and security of any military
11 installation.

12 (III) Testing of military equipment, vehicles, weapons, and
13 sensors for proper operation or suitability for combat use.

14 (ii) “Military installation” means a base, camp, post, station,
15 yard, center, homeport facility for any ship, or other activity
16 under the jurisdiction of the United States Department of Defense
17 as defined in paragraph (1) of subsection (e) of Section 2687 of
18 Title 10 of the United States Code.

19 (b) A circulation element consisting of the general location
20 and extent of existing and proposed major thoroughfares,
21 transportation routes, terminals, any military airports and ports,
22 and other local public utilities and facilities, all correlated with
23 the land use element of the plan.

24 (c) A housing element as provided in Article 10.6
25 (commencing with Section 65580).

26 (d) (1) A conservation element for the conservation,
27 development, and utilization of natural resources including water
28 and its hydraulic force, forests, soils, rivers and other waters,
29 harbors, fisheries, wildlife, minerals, and other natural resources.
30 The conservation element shall consider the effect of
31 development within the jurisdiction, as described in the land use
32 element, on natural resources located on public lands, including
33 military installations. That portion of the conservation element
34 including waters shall be developed in coordination with any
35 countywide water agency and with all district and city agencies,
36 *including flood management, water conservation, or*
37 *groundwater agencies* that have developed, served, controlled,
38 *managed*, or conserved water *of any type* for any purpose ~~for~~ *in*
39 the county or city for which the plan is prepared. Coordination
40 shall include the discussion and evaluation of any water supply

1 and demand information described in Section 65352.5, if that
2 information has been submitted by the water agency to the city or
3 county. ~~The~~

4 (2) *The* conservation element may also cover the following:

5 ~~(1)~~

6 (A) The reclamation of land and waters.

7 ~~(2)~~

8 (B) Prevention and control of the pollution of streams and
9 other waters.

10 ~~(3)~~

11 (C) Regulation of the use of land in stream channels and other
12 areas required for the accomplishment of the conservation plan.

13 ~~(4)~~

14 (D) Prevention, control, and correction of the erosion of soils,
15 beaches, and shores.

16 ~~(5)~~

17 (E) Protection of watersheds.

18 ~~(6)~~

19 (F) The location, quantity, and quality of the rock, sand and
20 gravel resources.

21 ~~(7) Flood control.~~

22 ~~The conservation element shall be prepared and adopted no~~
23 ~~later than December 31, 1973.~~

24 (3) *Upon the next revision of the housing element on or after*
25 *January 1, 2008, the conservation element shall identify rivers,*
26 *creeks, streams, flood corridors, riparian habitat, and land that*
27 *may accommodate floodwater for purposes of groundwater*
28 *recharge and stormwater management.*

29 (e) An open-space element as provided in Article 10.5
30 (commencing with Section 65560).

31 (f) A noise element which shall identify and appraise noise
32 problems in the community. The noise element shall recognize
33 the guidelines established by the Office of Noise Control in the
34 State Department of Health Services and shall analyze and
35 quantify, to the extent practicable, as determined by the
36 legislative body, current and projected noise levels for all of the
37 following sources:

38 (1) Highways and freeways.

39 (2) Primary arterials and major local streets.

1 (3) Passenger and freight on-line railroad operations and
2 ground rapid transit systems.

3 (4) Commercial, general aviation, heliport, helistop, and
4 military airport operations, aircraft overflights, jet engine test
5 stands, and all other ground facilities and maintenance functions
6 related to airport operation.

7 (5) Local industrial plants, including, but not limited to,
8 railroad classification yards.

9 (6) Other ground stationary noise sources, including, but not
10 limited to, military installations, identified by local agencies as
11 contributing to the community noise environment.

12 ~~Noise~~

13 (7) (A) *Noise* contours shall be shown for all of these sources
14 and stated in terms of community noise equivalent level (CNEL)
15 or day-night average level (L_{dn}). The noise contours shall be
16 prepared on the basis of noise monitoring or following generally
17 accepted noise modeling techniques for the various sources
18 identified in paragraphs (1) to (6), inclusive.

19 ~~The~~

20 (B) *The* noise contours shall be used as a guide for establishing
21 a pattern of land uses in the land use element that minimizes the
22 exposure of community residents to excessive noise.

23 ~~The~~

24 (C) *The* noise element shall include implementation measures
25 and possible solutions that address existing and foreseeable noise
26 problems, if any. The adopted noise element shall serve as a
27 guideline for compliance with the state's noise insulation
28 standards.

29 (g) (1) A safety element for the protection of the community
30 from any unreasonable risks associated with the effects of
31 seismically induced surface rupture, ground shaking, ground
32 failure, tsunami, seiche, and dam failure; slope instability leading
33 to mudslides and landslides; subsidence, liquefaction and other
34 seismic hazards identified pursuant to Chapter 7.8 (commencing
35 with Section 2690) of the Public Resources Code, and other
36 geologic hazards known to the legislative body; flooding; and
37 wild land and urban fires. The safety element shall include
38 mapping of known seismic and other geologic hazards. It shall
39 also address evacuation routes, military installations, peakload
40 water supply requirements, and minimum road widths and

1 clearances around structures, as those items relate to identified
2 fire and geologic hazards.

3 (2) *The safety element, upon the next revision of the housing*
4 *element on or after January 1, 2008, shall also do the following:*

5 (A) *Identify information regarding flood hazards, including,*
6 *but not limited to, the following:*

7 (i) *Flood hazard zones. As used in this subdivision, “flood*
8 *hazard zone” means an area subject to flooding that is*
9 *delineated as either a special hazard area or an area of*
10 *moderate or minimal hazard on an official flood insurance rate*
11 *map issued by the Federal Emergency Management Agency. The*
12 *identification of a flood hazard zone does not imply that areas*
13 *outside the flood hazard zones or uses permitted within flood*
14 *hazard zones will be free from flooding or flood damage.*

15 (ii) *National Flood Insurance Program maps published by the*
16 *Federal Emergency Management Agency.*

17 (iii) *Information about flood hazards that is available from the*
18 *United States Army Corps of Engineers.*

19 (iv) *Designated floodway maps that are available from the*
20 *Reclamation Board.*

21 (v) *Dam failure inundation maps prepared pursuant to Section*
22 *8589.5 that are available from the Office of Emergency Services.*

23 (vi) *Awareness Floodplain Mapping Program maps that are*
24 *available from the Department of Water Resources.*

25 (vii) *Areas subject to inundation in the event of the failure of*
26 *levees or floodwalls.*

27 (viii) *Historical data on flooding, including locally prepared*
28 *maps of areas that are subject to flooding, areas that are*
29 *vulnerable to flooding after wildfires, and sites that have been*
30 *repeatedly damaged by flooding.*

31 (ix) *Existing and planned development in flood hazard zones,*
32 *including structures, roads, utilities, and essential public*
33 *facilities.*

34 (x) *Local, state, and federal agencies with responsibility for*
35 *flood protection, including special districts and local offices of*
36 *emergency services.*

37 (B) *Establish a set of comprehensive goals, policies, and*
38 *objectives, based on the information identified pursuant to*
39 *subparagraph (A), for the protection of the community from the*
40 *unreasonable risks of flooding, including, but not limited to:*

1 (i) Avoiding or minimizing the risks of flooding to new
2 development.

3 (ii) Evaluating whether new development should be located in
4 flood hazard zones, and identifying construction methods or
5 other methods to minimize damage if new development is located
6 in flood hazard zones.

7 (iii) Maintaining the structural and operational integrity of
8 essential public facilities during flooding.

9 (iv) Locating, when feasible, new essential public facilities
10 outside of flood hazard zones, including hospitals and healthcare
11 facilities, emergency shelters, fire stations, emergency command
12 centers, and emergency communications facilities or identifying
13 construction methods or other methods to minimize damage if
14 these facilities are located in flood hazard zones.

15 (v) Establishing cooperative working relationships among
16 public agencies with responsibility for flood protection.

17 (C) Establish a set of feasible implementation measures
18 designed to carry out the goals, policies, and objectives
19 established pursuant to subparagraph (B).

20 (3) After the initial revision of the safety element pursuant to
21 paragraph (2), upon each revision of the housing element, the
22 planning agency shall review and, if necessary, revise the safety
23 element to identify new information that was not available during
24 the previous revision of the safety element.

25 (4) Cities and counties that have floodplain management
26 ordinances that have been approved by the Federal Emergency
27 Management Agency that substantially comply with this section,
28 or have substantially equivalent provisions to this subdivision in
29 their general plans, may use that information in the safety
30 element to comply with this subdivision, and shall summarize
31 and incorporate by reference into the safety element the other
32 general plan provisions or the floodplain ordinance, specifically
33 showing how each requirement of this subdivision has been met.

34 (5) Prior to the periodic review of its general plan and prior to
35 preparing or revising its safety element, each city and county
36 shall consult the Division of Mines and Geology of the
37 Department of Conservation, the Reclamation Board, if the city
38 and county is located within the boundaries of the Sacramento
39 and San Joaquin Drainage District, as set forth in Section 8501
40 of the Water Code, and the Office of Emergency Services for the

1 purpose of including information known by and available to the
2 department~~—and the~~, office *and board* required by this
3 subdivision.

4 (2)

5 (6) To the extent that a county's safety element is sufficiently
6 detailed and contains appropriate policies and programs for
7 adoption by a city, a city may adopt that portion of the county's
8 safety element that pertains to the city's planning area in
9 satisfaction of the requirement imposed by this subdivision.

10 *SEC. 3. Section 65302.7 is added to the Government Code, to*
11 *read:*

12 *65302.7. (a) For the purposes of complying with Section*
13 *65302.5, each county or city located within the boundaries of the*
14 *Sacramento and San Joaquin Drainage District, as set forth in*
15 *Section 8501 of the Water Code, shall submit the draft element*
16 *of, or draft amendment to, the safety element to the Reclamation*
17 *Board and to every local agency that provides flood protection to*
18 *territory in the city or county at least 90 days prior to the*
19 *adoption of, or amendment to, the safety element of its general*
20 *plan.*

21 *(b) The Reclamation Board and each local agency described*
22 *in paragraph (1) shall review the draft or an existing safety*
23 *element and report their respective written recommendations to*
24 *the planning agency within 60 days of the receipt of the draft or*
25 *existing safety element. The Reclamation Board and each local*
26 *agency shall review the draft or existing safety element and may*
27 *offer written recommendations for changes to the draft or*
28 *existing safety element regarding both of the following:*

29 *(1) Uses of land and policies in areas subjected to flooding*
30 *that will protect life, property, and natural resources from*
31 *unreasonable risks associated with flooding.*

32 *(2) Methods and strategies for flood risk reduction and*
33 *protection within areas subjected to flooding.*

34 *(c) Prior to the adoption of its draft element or draft*
35 *amendments to the safety element, the board of supervisors of the*
36 *county or the city council of a city shall consider the*
37 *recommendations made by the Reclamation Board and any local*
38 *agency that provides flood protection to territory in the city or*
39 *county. If the board of supervisors or the city council determines*
40 *not to accept all or some of the recommendations, if any, made*

1 *by the Reclamation Board or the local agency, the board of*
2 *supervisors or the city council shall make findings that state its*
3 *reasons for not accepting a recommendation and shall*
4 *communicate those findings in writing to the Reclamation Board*
5 *or to the local agency.*

6 *(d) If the Reclamation Board's or the local agency's*
7 *recommendations are not available within the time limits*
8 *required by this section, the board of supervisors or the city*
9 *council may act without those recommendations. The board of*
10 *supervisors or city council shall consider the recommendations*
11 *at the next time it considers amendments to its safety element.*

12 *SEC. 4. Section 65303.4 of the Government Code is amended*
13 *to read:*

14 *65303.4. The Department of Water Resources or the*
15 *Reclamation Board, as appropriate, and the Department of Fish*
16 *and Game may develop site design and planning policies to assist*
17 *local agencies which request help in implementing the general*
18 *plan guidelines for meeting flood control objectives and other*
19 *land management needs.*

20 *SEC. 5. Section 65352 of the Government Code is amended to*
21 *read:*

22 *65352. (a) Prior to action by a legislative body to adopt or*
23 *substantially amend a general plan, the planning agency shall*
24 *refer the proposed action to all of the following entities:*

25 *(1) A city or county, within or abutting the area covered by the*
26 *proposal, and any special district that may be significantly*
27 *affected by the proposed action, as determined by the planning*
28 *agency.*

29 *(2) An elementary, high school, or unified school district*
30 *within the area covered by the proposed action.*

31 *(3) The local agency formation commission.*

32 *(4) An areawide planning agency whose operations may be*
33 *significantly affected by the proposed action, as determined by*
34 *the planning agency.*

35 *(5) A federal agency if its operations or lands within its*
36 *jurisdiction may be significantly affected by the proposed action,*
37 *as determined by the planning agency.*

38 *(6) (A) The branches of the United States Armed Forces that*
39 *have provided the Office of Planning and Research with a*
40 *California mailing address pursuant to subdivision (d) of Section*

1 65944 when the proposed action is within 1,000 feet of a military
2 installation, or lies within special use airspace, or beneath a
3 low-level flight path, as defined in Section 21098 of the Public
4 Resources Code, provided that the United States Department of
5 Defense provides electronic maps of low-level flight paths,
6 special use airspace, and military installations at a scale and in an
7 electronic format that is acceptable to the Office of Planning and
8 Research.

9 (B) Within 30 days of a determination by the Office of
10 Planning and Research that the information provided by the
11 Department of Defense is sufficient and in an acceptable scale
12 and format, the office shall notify cities, counties, and cities and
13 counties of the availability of the information on the Internet.
14 Cities, counties, and cities and counties shall comply with
15 subparagraph (A) within 30 days of receiving this notice from the
16 office.

17 (7) A public water system, as defined in Section 116275 of the
18 Health and Safety Code, with 3,000 or more service connections,
19 that serves water to customers within the area covered by the
20 proposal. The public water system shall have at least 45 days to
21 comment on the proposed plan, in accordance with subdivision
22 (b), and to provide the planning agency with the information set
23 forth in Section 65352.5.

24 (8) The Bay Area Air Quality Management District for a
25 proposed action within the boundaries of the district.

26 (9) On and after March 1, 2005, a California Native American
27 tribe, that is on the contact list maintained by the Native
28 American Heritage Commission, with traditional lands located
29 within the city or county's jurisdiction.

30 (10) *The Reclamation Board for a proposed action within the*
31 *boundaries of the Sacramento and San Joaquin Drainage*
32 *District, as set forth in Section 8501 of the Water Code.*

33 (b) Each entity receiving a proposed general plan or
34 amendment of a general plan pursuant to this section shall have
35 45 days from the date the referring agency mails it or delivers it
36 in which to comment unless a longer period is specified by the
37 planning agency.

38 (c) (1) This section is directory, not mandatory, and the
39 failure to refer a proposed action to the other entities specified in
40 this section does not affect the validity of the action, if adopted.

1 (2) To the extent that the requirements of this section conflict
2 with the requirements of Chapter 4.4 (commencing with Section
3 65919), the requirements of Chapter 4.4 shall prevail.

4 SEC. 6. Section 65584.08 is added to the Government Code,
5 to read:

6 65584.08. *The determination of available land suitable for*
7 *urban development pursuant to subparagraph (B) of paragraph*
8 *(2) of subdivision (d) of Section 65584.04 may exclude lands*
9 *where the flood management infrastructure designed to protect*
10 *that land is not adequate to avoid the risk of flooding such that*
11 *the development of housing on that land would be infeasible*
12 *because of cost or other considerations. Information from the*
13 *Reclamation Board, the United States Army Corps of Engineers,*
14 *or other sources may be used to support determinations made*
15 *pursuant to this subparagraph.*

16 SEC. 7. Section 66474.11 is added to the Government Code,
17 to read:

18 66474.11. *If a local agency requires the subdivider to*
19 *construct or improve flood protection facilities as a condition of*
20 *a tentative map, parcel map, or final map application or*
21 *approval, the local agency shall determine whether the*
22 *construction or improvement of those flood protection facilities*
23 *would result in increasing the risk of flooding or damages to*
24 *other real property in the same watershed.*

25 SEC. 8. Section 8306 is added to the Water Code, to read:

26 8306. (a) *Notwithstanding any other provision of law, the*
27 *department may provide meals and other necessary support to*
28 *any person, including, but not limited to, an employee of the*
29 *department, who is engaged in emergency flood fight activities*
30 *on behalf of, or in cooperation with, the department.*

31 (b) *For the purposes of this section, “emergency flood fight*
32 *activities” mean actions taken under emergency conditions to*
33 *maintain flood control features, the failure of which threaten to*
34 *destroy life, property, or resources.*

35 SEC. 9. Chapter 6 (commencing with Section 8460) is added
36 to Part 2 of Division 5 of the Water Code, to read:

CHAPTER 6. FLOOD LIABILITY

8460. (a) In addition to any other legal responsibility provided by law, a city or county shall be subject to liability, whether or not the city or county directly participates in the operation or maintenance of a flood control project, to the extent that the city or county increases the amount of property damage sustained in a flood by approving new development in a levee flood protection zone.

(b) Nothing in this section shall be construed to prevent a local public entity from approving new housing developments in a previously undeveloped area.

(c) Nothing in this section shall be construed to limit a court from finding a city or county liable for damages sustained in a flood caused by its act or acts, including, but not limited to, approval of a development and public improvements in an area protected by a levee that constitutes a contributing cause of the damages.

(d) For purposes of this section, the following terms have the following meanings:

(1) "Levee flood protection zone" has the same meaning as in subdivision (b) of Section 9110.

(2) "Project levee" means any levee that is part of the facilities of the State Plan of Flood Control, as defined in Section 8523 of the Water Code.

(3) "Undeveloped area" means an area devoted to agricultural use, as defined in Section 51201 of the Government Code, or open-space land, as defined in Section 65560 of the Government Code.

SEC. 10. Section 8612 is added to the Water Code, to read:

8612. (a) On or before December 31, 2007, the department shall prepare, and the board shall adopt, a schedule for mapping areas at risk of flooding in the Sacramento River and San Joaquin River drainage.

(b) The department shall update the schedule annually and shall present the updated schedule to the board for adoption on or before December 31 of each year. The update shall include the status of mapping in progress and an estimated time of completion. The schedule shall be based on the present and expected future risk of flooding and associated consequences.

1 *SEC. 11. Section 8613 is added to the Water Code, to read:*

2 8613. (a) *The board or the department may establish a*
3 *program of mitigation banking for the activities of the board or*
4 *the department under this part and for the benefit of local*
5 *districts in the discharge of their flood control responsibilities*
6 *under this part and the State Water Resources Law of 1945*
7 *(Chapter 1 (commencing with Section 12570) and Chapter 2*
8 *(commencing with Section 12639) of Part 6 of Division 6).*

9 (b) *For the purposes of carrying out subdivision (a), the board*
10 *or the department, in consultation with all appropriate state,*
11 *local, and federal agencies with jurisdiction over environmental*
12 *protection that are authorized to regulate and impose*
13 *requirements upon the flood control work performed under this*
14 *part or the State Water Resources Law of 1945 (Chapter 1*
15 *(commencing with Section 12570) and Chapter 2 (commencing*
16 *with Section 12639) of Part 6 of Division 6), may establish a*
17 *system of mitigation banking by which mitigation credits may be*
18 *acquired in advance for flood control work to be performed by*
19 *the board, the department, or a local agency authorized to*
20 *operate and maintain facilities of the State Plan of Flood*
21 *Control.*

22 *SEC. 12. Chapter 9 (commencing with Section 9110) is added*
23 *to Part 4 of Division 5 of the Water Code, to read:*

24
25 *CHAPTER 9. REPORTS*

26
27 *Article 1. Definitions*

28
29 9110. *Unless the context requires otherwise, the definitions*
30 *set forth in this article govern the construction of this chapter.*

31 (a) *“Fiscal year” has the same meaning as that set forth in*
32 *Section 13290 of the Government Code.*

33 (b) *“Levee flood protection zone” means the area, as*
34 *determined by the board or the department, that is protected by a*
35 *project levee.*

36 (c) *“Local agency” means a local agency responsible for the*
37 *maintenance of a project levee.*

38 (d) *“Maintenance” has the same meaning as that set forth in*
39 *subdivision (f) of Section 12878.*

1 (e) “Project levee” means any levee that is part of the
2 facilities of the State Plan of Food Control.

3 (f) “State Plan of Flood Control” has the same meaning as
4 that set forth in Section 8523 of the Water Code.

5
6 Article 2. State Reports
7

8 9120. (a) The department shall prepare and the board shall
9 adopt a flood control system status report for the State Plan of
10 Flood Control. This status report shall be updated periodically,
11 as determined by the board. For the purposes of preparing the
12 report, the department shall inspect the project levees and review
13 available information to ascertain whether there are evident
14 deficiencies.

15 (b) The status report shall include identification and
16 description of each facility, an estimate of the risk of levee
17 failure, a discussion of the inspection and review undertaken
18 pursuant to subdivision (a), and appropriate recommendations
19 regarding the levees and future work activities.

20 (c) The status report shall identify deficiencies in the State
21 Plan of Flood Control and shall include recommendations for
22 resolving those deficiencies.

23 (d) On or before December 31, 2007, the board shall advise
24 the Legislature, in writing, as to the board’s schedule of
25 implementation of this section.

26 9121. (a) On or before September 1, 2009, and on or before
27 September 1 of each year thereafter, the department shall
28 provide written notice to each landowner whose property is
29 determined to be entirely or partially within a levee flood
30 protection zone.

31 (b) The notice shall include statements regarding all of the
32 following:

33 (1) The property is located behind a levee.

34 (2) Levees reduce, but do not eliminate, the risk of flooding
35 and are subject to catastrophic failure.

36 (3) If available, the level of flood risk as described in the flood
37 control system status report described in Section 9120 and a
38 levee flood protection zone map prepared in accordance with
39 Section 9130.

1 (4) *The State of California recommends that property owners*
2 *in a levee flood protection zone obtain flood insurance, such as*
3 *the insurance provided by the Federal Emergency Management*
4 *Agency through the National Flood Insurance Program.*

5 (5) *Information about purchasing federal flood insurance.*

6 (6) *The Internet address of the Web site that contains the*
7 *information required by the flood management report described*
8 *in Section 9141.*

9 (7) *Any other information determined by the department to be*
10 *relevant.*

11 (c) *A county, with assistance from the department, shall*
12 *annually provide to the department, by electronic means, lists of*
13 *names and addresses of property owners in a levee flood*
14 *protection zone located in that county.*

15 (d) *Notwithstanding any other provision of the law, the*
16 *department may enter into contracts with private companies to*
17 *provide the notices required by this section.*

18 9122. *The board shall determine the areas benefited by*
19 *facilities of the State Plan of Flood Control based on information*
20 *developed by the department.*

21
22 Article 3. *Levee Flood Protection Zone Maps*
23

24 9130. (a) *The department shall prepare, update, and*
25 *maintain maps for levee flood protection zones. The maps shall*
26 *include flood depth contours determined by the department if that*
27 *information is available.*

28 (b) *The department shall distribute the levee flood protection*
29 *zone maps to appropriate governmental agencies, as determined*
30 *by the department.*

31 (c) *The department shall make the maps readily available to*
32 *the public. The department may charge a fee for the cost of*
33 *reproducing the maps.*

34
35 Article 4. *Local Reports*
36

37 9140. (a) *On or before September 30 of each year, a local*
38 *agency responsible for the operation and maintenance of a*
39 *project levee shall prepare and submit to the department, in a*
40 *format specified by the department, a report of information for*

1 inclusion in periodic flood management reports prepared by the
2 department relating to the project levee. The information
3 submitted to the department shall include all of the following:

4 (1) Information known to the local agency that is relevant to
5 the condition or performance of the project levee.

6 (2) Information identifying known conditions that might
7 impair or compromise the level of flood protection provided by
8 the project levee.

9 (3) A summary of the maintenance performed by the local
10 agency during the previous fiscal year.

11 (4) A statement of work and estimated cost for operation and
12 maintenance of the project levee for the current fiscal year, as
13 approved by the local agency.

14 (5) Any other readily available information contained in the
15 records of the local agency relevant to the condition or
16 performance of the project levee, as determined by the board or
17 the department.

18 (b) A local agency described in subdivision (a) that operates
19 and maintains a nonproject levee that also benefits land within
20 the boundaries of the area benefited by the project levee shall
21 include information pursuant to subdivision (a) with regard to
22 the nonproject levee.

23 (c) A local agency that incurs costs for the maintenance or
24 improvement of a project or nonproject levee under the delta
25 levee maintenance subventions program established pursuant to
26 Part 9 (commencing with Section 12980) of Division 6 may
27 submit information submitted to satisfy the requirements of that
28 program to meet the requirements of paragraph (3) of
29 subdivision (a), but may do so only for that reach of the levee
30 included in that program.

31 (d) (1) A local agency responsible for the operation and
32 maintenance of a levee not otherwise subject to this section may
33 voluntarily prepare and submit to the department or the board a
34 flood management report for posting on the Internet Web site of
35 the department or the board.

36 (2) A flood management report submitted pursuant to
37 paragraph (1) shall be made available on the Internet Web site of
38 the board if the local agency is partially or wholly within the
39 geographical boundaries of the board's jurisdiction. Otherwise,

1 *the report shall be made available on the Internet Web site of the*
2 *department.*

3 *9141. (a) The department shall prepare and transmit to the*
4 *board a report on the project levees operated and maintained by*
5 *each local agency, using information provided by the local*
6 *agency pursuant to Section 9140 and information from relevant*
7 *portions of any of the following documents, as determined by the*
8 *department:*

9 *(1) Annual inspection reports on local agency maintenance*
10 *prepared by the department or the board.*

11 *(2) The State Plan of Flood Control.*

12 *(3) The flood control system status report described in Section*
13 *9120.*

14 *(4) The schedule for mapping described in Section 8612.*

15 *(5) Any correspondence, document, or information deemed*
16 *relevant by the department.*

17 *(b) The department shall make the flood management report*
18 *for each local agency available on the Internet Web site of the*
19 *board and shall provide the report to all of the following entities:*

20 *(1) The local agency.*

21 *(2) Any city or county within the local agency's jurisdiction.*

22 *(3) Any public library located within the local agency's*
23 *jurisdiction.*

24 *(c) The report shall be completed on or before December 31,*
25 *2007, and shall be updated annually.*

26 *9142. A local agency responsible for the operation and*
27 *maintenance of a project levee may propose to the board an*
28 *upgrade of the project levee if the local agency determines that*
29 *the upgrade is appropriate. The local agency may implement that*
30 *upgrade if approved by the board.*

31 *SEC. 13. Part 8 (commencing with Section 9650) is added to*
32 *Division 5 of the Water Code, to read:*

33
34 **PART 8. PROJECT LEVEE UPGRADES**
35

36 *9650. (a) (1) Commencing July 1, 2007, the allocation or*
37 *expenditure of funds by the state for the upgrade of a project*
38 *levee, if that upgrade is authorized by a statute that becomes*
39 *operative on or after July 1, 2007, that protects an area in which*
40 *more than 1,000 people reside shall be subject to a requirement*

1 *that the local agency responsible for the operation and*
2 *maintenance of the project levee and any city or county protected*
3 *by the project levee, including a charter city or charter county,*
4 *enter into an agreement to adopt a safety plan within two years.*
5 *If a city or county is responsible for the operation and*
6 *maintenance of the project levee, the governing body shall*
7 *approve a resolution committing to the preparation of a safety*
8 *plan within two years.*

9 *(2) The local entity responsible for the operation and*
10 *maintenance of the project levee shall submit a copy of the safety*
11 *plan to the department and the Reclamation Board.*

12 *(b) The safety plan, at a minimum, shall include all of the*
13 *following elements:*

14 *(1) A flood preparedness plan that includes storage of*
15 *materials that can be used to reinforce or protect a levee when a*
16 *risk of failure exists.*

17 *(2) A levee patrol plan for high water situations.*

18 *(3) A flood-fight plan for the period before state or federal*
19 *agencies assume control over the flood-fight.*

20 *(4) An evacuation plan that includes a system for adequately*
21 *warning the general public in the event of a levee failure, and a*
22 *plan for the evacuation of every affected school, residential care*
23 *facility for the elderly, and long-term health care facility.*

24 *(5) A floodwater removal plan.*

25 *(6) A requirement, to the extent reasonable, that either of the*
26 *following applies to a new building in which the inhabitants are*
27 *expected to be essential service providers:*

28 *(A) The building is located outside an area that may be*
29 *flooded.*

30 *(B) The building is designed to be operable shortly after the*
31 *floodwater is removed.*

32 *(c) The safety plan shall be integrated into any other local*
33 *agency emergency plan and shall be coordinated with the state*
34 *emergency plan.*

35 *(d) This section does not require the adoption of an element of*
36 *the safety plan that was adopted previously and remains in effect.*

37 *9651. Unless the context requires otherwise, the definitions*
38 *set forth in this section govern the construction of this part.*

1 (a) “Emergency plan” and “state emergency plan” have the
2 meanings set forth in subdivisions (a) and (b), respectively, of
3 Section 8560 of the Government Code.

4 (b) “Essential service providers” includes, but is not limited
5 to, hospitals, fire stations, police stations, and jails.

6 (c) “Long-term health care facility” has the same meaning as
7 defined in Section 1418 of the Health and Safety Code.

8 (d) “Project levee” means any levee that is part of the
9 facilities of the State Plan of Flood Control, as defined in Section
10 8523 of the Water Code.

11 (e) “Residential care facility for the elderly” has the same
12 meaning as defined in Section 1569.2 of the Health and Safety
13 Code.

14 (f) “School” means a public or private preschool, elementary
15 school, or secondary school or institution.

16 (g) (1) “Upgrade of a project levee” means installing a levee
17 underseepage control system, increasing the height or bulk of a
18 levee, installing a slurry wall or sheet pile into the levee,
19 rebuilding a levee because of internal geotechnical flaws, or
20 adding a stability berm.

21 (2) Notwithstanding paragraph (1), an upgrade of a project
22 levee does not include any action undertaken on an emergency
23 basis.

24 SEC. 14. Section 12585.11 is added to the Water Code, to
25 read:

26 12585.11. Upon appropriation by the Legislature for a
27 specific project, or for a project authorized by the Legislature, or
28 for a small flood management project authorized by Section
29 12750, for which the department makes the findings required by
30 Section 12750.1, the department or the board may advance funds
31 to the federal government or perform flood control and
32 environmental restoration project planning, design, and
33 construction in advance of the federal government and seek
34 reimbursement or credit from the federal government for the cost
35 of that work determined by the federal government to be eligible
36 for reimbursement or credit.

37 SEC. 15. Section 12585.12 is added to the Water Code, to
38 read:

39 12585.12. The department or board may participate with the
40 federal government or local agencies in the design of

1 *environmental enhancements associated with a federal flood*
2 *control project and participate in the construction of*
3 *environmental enhancements associated with a federal flood*
4 *control project for which the state has authorized state*
5 *participation.*

6 SEC. 16. *Section 12878.1 of the Water Code is amended to*
7 *read:*

8 12878.1. (a) Whenever the *board or the* department finds
9 that a unit of a project, *or any portion of a unit of a project*, is not
10 being operated or maintained in accordance with the standards
11 established by federal regulations or whenever the governing
12 body of a local agency obligated to operate and maintain that unit
13 by resolution duly adopted and filed with the department declares
14 that it no longer desires to operate and maintain the unit, the
15 department shall prepare a statement to that effect specifying in
16 detail the particular items of work necessary to be done in order
17 to comply with the standards of the federal government together
18 with an estimate of the cost thereof for the current fiscal year and
19 for the ensuing fiscal year.

20 (b) Subject to subdivision (c), but notwithstanding any other
21 provision of law, the board or the department is not required to
22 proceed in accordance with subdivision (a) or with the formation
23 of a maintenance area under this chapter if neither the board nor
24 the department has given the nonfederal assurances to the United
25 States required for the project. If neither the board nor the
26 department has given the nonfederal assurances to the United
27 States required for the project, the board or department may elect
28 to proceed with the formation if it determines that the formation
29 of a maintenance area is in the best interest of the state.

30 ~~(c) (1) Subdivision (b) does not apply to any project for which~~
31 ~~an application for the formation of a maintenance area under this~~
32 ~~chapter has been submitted to the department by a local agency~~
33 ~~on or before July 1, 2003.~~

34 ~~(2) Subject to paragraph (3), the department or the board shall~~
35 ~~proceed in accordance with subdivision (a) and with the~~
36 ~~formation of a maintenance area in accordance with this chapter~~
37 ~~for any project described in paragraph (1).~~

38 ~~(3) Before the department or the board forms a maintenance~~
39 ~~area pursuant to this subdivision, the local agency shall enter into~~
40 ~~an agreement with the department pursuant to which the local~~

1 ~~agency agrees to indemnify and hold and save harmless the state,~~
2 ~~its officers, agents, and employees for any and all liability for~~
3 ~~damages that may arise out of the planning, design, construction,~~
4 ~~operation, maintenance, repair, or rehabilitation of the project, or~~
5 ~~the dissolution or modification of the maintenance area formed~~
6 ~~pursuant to this subdivision.~~

7 *(c) If a local agency requests the department to form a*
8 *maintenance area by resolution duly adopted and filed with the*
9 *department, the department shall estimate the cost of preparing*
10 *the statement of necessary work and the cost thereof, and all*
11 *other applicable costs incurred by the department before the*
12 *formation of the maintenance area. The department shall submit*
13 *that estimate to the local agency. The department is not required*
14 *to perform any additional work to form that maintenance area*
15 *until the local agency pays the department the amount estimated*
16 *pursuant to this subdivision.*

17 *SEC. 17. Section 12878.21 of the Water Code is amended to*
18 *read:*

19 *12878.21. Upon the formation of a maintenance area, the*
20 *department shall thereafter operate and maintain the unit until*
21 *such time as the maintenance area may be dissolved pursuant to*
22 *the provisions of this chapter. If the board or the department*
23 *forms a maintenance area for a portion of a unit of a project, any*
24 *remaining portion of the unit of a project not included in the*
25 *maintenance area shall remain the responsibility of the local*
26 *agency obligated to operate and maintain that unit.*

27 *SEC. 18. Section 12878.23 of the Water Code is amended to*
28 *read:*

29 *12878.23. (a) The board or the department may modify the*
30 *boundaries of any established maintenance area or zones ~~therein~~*
31 *within the maintenance area, the description of works to be*
32 *maintained ~~therein~~ within the maintenance area, and the*
33 *determination of relative benefits within any zone ~~may be~~*
34 *modified by the board or department, upon its own initiative or*
35 *upon petition by the governing body of the local agency formerly*
36 *responsible for the operation and maintenance of the unit or by*
37 *the board of supervisors of the county in which all or a portion of*
38 *the unit is located.*

39 *(b) The board or the department may consolidate maintenance*
40 *areas that share a common boundary.*

1 *SEC. 19. (a) The Legislature finds and declares all of the*
2 *following:*

3 *(1) The Sacramento-San Joaquin Delta is a critical link in*
4 *California's water supply system. The project levees and delta*
5 *levees that make up the levee conveyance system transport water*
6 *to the State Water Project and Central Valley Project water*
7 *export facilities in the south delta.*

8 *(2) The State Water Project and Central Valley Project convey*
9 *water through the delta to more than 22,000,000 Californians*
10 *who rely upon the performance of the levee conveyance system*
11 *for their water. This water is also used on 7,000,000 acres of*
12 *productive farmland.*

13 *(3) In addition to benefits for water projects, the delta levees*
14 *and project levees provide many other benefits, including, but not*
15 *limited to, benefits relating to transportation, power*
16 *transmission, and recreation and other public trust uses, as well*
17 *as the protection of private property.*

18 *(4) In order to reduce risks to these multiple interests,*
19 *improvements must be made to delta levees, project levees, and*
20 *the levee conveyance system those levees create.*

21 *(5) The state expends substantial taxpayer funding to maintain*
22 *and improve project levees and delta levees, which include both*
23 *publicly and privately owned levees.*

24 *(b) For the purposes of this section, the following terms have*
25 *the following meanings:*

26 *(1) "Delta levees" mean the levees that protect the islands in*
27 *the Sacramento-San Joaquin Delta, as defined in Section 12220*
28 *of the Water Code, from flooding and inundation.*

29 *(2) "Levee conveyance system" means the streams and canals*
30 *formed by project levees and delta levees.*

31 *(3) "Project levee" means any levee that is part of the*
32 *facilities of the State Plan of Flood Control, as defined in Section*
33 *8523 of the Water Code.*

34 *(c) (1) The Department of Water Resources, in consultation*
35 *with the Reclamation Board and other appropriate federal, state,*
36 *and local agencies, shall conduct a study to identify the persons*
37 *or entities that benefit from the delta levees, project levees, and*
38 *the levee conveyance system, and shall submit a report to the*
39 *Legislature by January 1, 2008, that reflects the conclusions of*
40 *the study.*

1 (2) For the purposes of implementing paragraph (1), the
2 department may use information collected in connection with its
3 evaluations conducted pursuant to Section 139.2 and 139.4 of the
4 Water Code.

5 (d) The department shall include in the report
6 recommendations, in accordance with the “beneficiaries pay”
7 principle, as to those persons and entities on which a fee should
8 be imposed, including proposed fee categories, in order to create
9 a dedicated revenue stream to pay for the maintenance of, and
10 improvements to, delta levees, project levees, and the levee
11 conveyance system.

12 (e) The department shall submit a preliminary draft of the
13 report to the Reclamation Board and shall make copies of the
14 preliminary draft available to the public. The board shall hold
15 public hearings to provide an opportunity for written and oral
16 comments on the preliminary draft. The department shall
17 consider these comments before finalizing the report and its
18 recommendations to the Legislature.

19 SEC. 20. The provisions of this act are severable. If any
20 provision of this act or its application is held invalid, that
21 invalidity shall not affect other provisions or applications that
22 can be given effect without the invalid provision or application.

23 SEC. 21. No reimbursement is required by this act pursuant
24 to Section 6 of Article XIII B of the California Constitution for
25 certain costs that may be incurred by a local agency or school
26 district because, in that regard, this act creates a new crime or
27 infraction, eliminates a crime or infraction, or changes the
28 penalty for a crime or infraction, within the meaning of Section
29 17556 of the Government Code, or changes the definition of a
30 crime within the meaning of Section 6 of Article XIII B of the
31 California Constitution.

32 However, if the Commission on State Mandates determines that
33 this act contains other costs mandated by the state,
34 reimbursement to local agencies and school districts for those
35 costs shall be made pursuant to Part 7 (commencing with Section
36 17500) of Division 4 of Title 2 of the Government Code.

37 SEC. 22. This act shall become operative only if Senate Bill
38 1796 of the 2005–06 Regular Session is enacted and becomes
39 operative.

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**All matter omitted in this version of the bill
appears in the bill as amended in Senate,
August 28, 2006 (JR11)**

CORRECTIONS:

Heading — Coauthors — Line 2.

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